**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 27**

**ROCKY MOUNTAIN PLANNED PARENTHOOD, INC. D/B/A PPRM**

**Employer**

**and** **Case 27-RC-205940**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 105**

**Petitioner**

# BRIEF TO THE BOARD ON REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Todd Fredrickson
For FISHER & PHILLIPS LLP
1801 California Street, Suite 2700
Denver, CO 80202
Tel: (303) 218-3650
Fax: (303) 218-3651

*Attorneys for the Employer*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**CASES**

## I. INTRODUCTION AND REQUEST FOR ORAL ARGUMENT

In 2017, the SEIU, Local 105 ("Union") petitioned the National Labor Relations Board ("Board") to represent employees at fifteen (15) Planned Parenthood of the Rocky Mountains ("PPRM" or the "Employer") health centers, including approximately 154 of PPRM's 202 employees in the designated classifications. The petitioned-for unit excluded selected Colorado facilities, as well as related facilities in New Mexico and southern Nevada. At the hearing on the petition, PPRM contended that the unit was inappropriate because it did not include employees at all of the company's locations. In response to the hearing, the NLRB's Regional Director ("RD") issued a November 13, 2017 Decision ("Decision") and Direction of Election in which she ordered an election covering fourteen (14) of PPRM's facilities. PPRM seeks review of the RD's Decision because of the inappropriate exclusion of employees designated as clinical staff at PPRM's Alamosa, Durango, Cortez, and Salida, Colorado; Farmington and Albuquerque, New Mexico; and Las Vegas, Nevada facilities from the bargaining unit.[1] In excluding these individuals and

[1] As stated in the Decision: In Board Exhibit 2, the parties stipulated that the appropriate unit(s) should include the following classifications and that a *Sonotone* election would be appropriate given the proposed inclusion of professional employees in a unit with non-professional employees:

> Group A Included: Advanced Practice Nurse I, Advanced Practice Nurse II, Advanced Practice Nurse III, Traveling Advanced Practice Nurse, RN for Surgery Center, RN for Surgery Center 2, Float Advanced Practice Nurse, Float RN.
> Group B Included: Health Center Assistant, Health Center Assistant III, Advanced Health Center Assistant, Float Health Center Assistant III, Float Health Center Assistant, Float Advanced Health Center Assistant, Regional Traveling Advanced Health Center Assistant, Traveling Advanced Health Center Assistant III, Traveling Health Center Assistant.

(Decision, p. 1, n. 2.)

facilities, the RD failed to consider or disregarded community of interest factors long recognized by Board rules, policies, and precedent.

First, the RD failed to apply the proper presumptions applicable to the petitioned-for multi-facility unit. Simply, the RD ignored the guidance set forth in the Board's Hearing Officer's Guide ("Guide"), and sixty years of Board law, which states that, "an employer-wide unit is a presumptively appropriate unit." (Guide, p. 75); *see also Acme Markets, Inc.*, 328 NLRB 1208 (1999). By not addressing the fact that PPRM's proposed unit was the only presumptively appropriate unit presented, the Decision is not consistent with the Board guidance or precedent concerning petitioned-for multi-facility units.

Second, the RD ignored questions set forward in the Guide and Board precedent in examining whether the petitioned-for unit's community of interest was sufficiently distinct from the excluded facilities. In addressing only a handful of the relevant factors, the RD disregarded or failed to consider substantial evidence and improperly considered or resolved additional factors. Reasoning that the petitioned-for multi-facility unit was appropriate, the Decision cherry-picked certain facts and meandered its way to the end result of the RD's own version of the petitioned-for unit. In the end, the Decision fails to point to evidence that the community of interest for the petitioned-for unit was distinct from the community of interest they shared with employees at the other facilities.

Third, the RD improperly placed on PPRM the obligation to go beyond traditional community of interest standards and demonstrate an overwhelming community of interest between the petitioned-for unit of employees and the excluded employees. This reasoning reflects a *de*

*facto* application of the *Specialty Healthcare* standards, and is exactly the type of burden shifting that the Board has rejected. See *PCC Structurals, Inc.*, 365 NLRB No. 160 at slip op. at 4-5.

Lastly, the RD cited, but departed from *Acme Markets, Inc.*, 328 NLRB 1208 (1999). (Decision, p. 9). There, the Board rejected the regional director's approach, similar to that taken by the RD here, separating units limited to pharmacies in each of three separate states, and agreed with the employer's proposed employer-wide unit. Examining this precedent demonstrates that the Board has found that a "four-state, employerwide [sic] unit is an appropriate unit" on facts not nearly as strong as those in the present case.

## II. ARGUMENT

### 1. The RD Committed Prejudicial Error By Improperly Applying Board Guidance And Precedent In Analyzing A Petitioned-For Multi-Facility Unit.

#### A. The RD Failed To Apply The Proper Presumptions Applicable To A Petitioned-For Multi-Facility Unit.

In the Decision, the RD accurately stated that "[t]he Board does not apply a presumption in favor of finding petitioned-for multi-facility units to be appropriate. Nor does it apply a presumption against finding a petitioned-for multi-facility to be appropriate." (Decision, p. 5) (*citing Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 2). The RD, however, exhibited clear deference to the petitioned-for unit, to the point she constructed her own micro-unit by using the petitioned for unit as a baseline. Indeed, the RD ignored the Guide which states, in accordance with PPRM's argument, that "an employer-wide unit is a presumptively appropriate unit" and glossed over the Board maxim that "[e]xtensive evidence is not normally necessary when *all* of the employer's facilities are sought in a combined unit, for an employer-wide unit is a presumptively appropriate unit." (Guide, p. 75) (emphasis in original); *see also Acme Markets,*

*Inc.,* at 1209.[2] The RD provided no explanation for why she ignored the relevant guidance in reaching her conclusion, and did so without compelling factual support or citation to case law.

### B. The RD Ignored The Guide's Factors For Evaluating Community Of Interest And A Multi-Facility Unit.

At pages 74-76, the Guide includes eight factors the RD should consider where a multi-facility unit is sought by a labor organization, along with nine sets of related questions. The RD assessed only a handful of the factors included in the Guide. Similarly, the RD disregarded or failed to consider most of the factors set forth in the Guide with respect to the seven Community of Interest Questions set out at pages 72-74, and the twenty-one factors to be considered under Question 7 alone. By disregarding the questions included in the Guide, and in failing to accurately apply facts to the factors selected, the RD failed to properly compare terms and conditions of the petitioned-for employees with those excluded.

## 2. The RD Failed To Properly Analyze Whether The Petitioned-For Unit Has A Distinct Community Of Interests From the Excluded Employees.

### A. The RD Made Clear Factual Errors And Erroneously Applied An Overly Simplistic Analysis Of The Petitioned-For Multi-Facility Unit.

Where, as here, a union petitions for a unit that is greater than a single location, but less

[2] The Board has consistently held that an employer-wide bargaining unit is presumptively appropriate. *Greenhorne & O'Mara, Inc.,* 326 NLRB 514, 516 (1998); *Acme Markets, Inc.*, at 1209, n.9; *Montgomery Cty. Opportunity Bd.,* 249 NLRB 880, 881 (1980); *Jackson's Liquors,* 208 NLRB 807, 808 (1974). As the Board noted over 60 years ago : "A unit of such scope is the first one called appropriate in Section 9(b) of the Act, upon which the Board's authority to establish collective bargaining units rests." *Western Elec. Co.,* 98 NLRB 1018, 1032 (1952). The Board has recognized that an employer-wide unit offers advantages because it allows for efficient collective bargaining between management and the union, particularly where the employer maintains centralized management of labor relations. *Petrie Stores Corp.,* 266 NLRB 75, 77 (1983) (finding individual store units inappropriate because managerial decisions were made at the companywide level); *Local 1325, Retail Clerks Int'l Ass'n, AFL-CIO v. NLRB,* 414 F.2d 1194, 1202 (D.C. Cir. 1969) (noting "considerable degree of central office control over hiring and operations" may justify an employer-wide unit). Historically, the Board will approve an employer-wide unit unless the presumption in favor of such a unit is rebutted by detailed evidence demonstrating that the unit is inappropriate.

than the entire employer, the Board considers a variety of factors to determine whether the employees in the petitioned-for unit share a community of interests distinct from employees at excluded facilities. (Guide, p. 72-76); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986) (In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates a multitude of factors, including: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history).

For those factors she did analyze, the RD (as described below) made significant errors in applying the factors to the facts and evidence in this matter.

***i. Centralized Control of Management and Supervision***

The RD spends over four pages of the Decision (pp. 6-10) detailing the overwhelming and undisputed evidence of centralized control, supporting PPRM's overall unit, then concludes erroneously that this factor supports the petitioned-for unit (which the RD effectively determines elsewhere is not an appropriate unit because Petitioner sought to include Salida, which the RD then excluded). (Decision, pp. 18-19).

PPRM's COO testified at length about centralized management and supervision of all Health Centers in all three states. (Record: 26-40; *see also* Employer Exs. 10, 12, and 28). She and the Director of Human Resources also testified at length to all of the operational and human resources or labor relations functions that are handled centrally, such as purchasing for all of the Health Centers, record-keeping, hiring, interviewing, disciplining, discharging, promoting, transferring, and training applicants and employees in the bargaining unit. (Record: 152-63; 191-

95). While the local Health Center managers have some limited autonomy with these issues, the overwhelming majority of issues have to be run by leadership or human resources located in Denver, regardless of the state in which they are located.

This evidence should have led the RD to find that this factor favored the overall unit proposed by PPRM; however, the RD erroneously concluded that it favored the Petitioner. (Decision, p. 19); *see also Sleepy's Inc.*, 355 NLRB 132, 138 (2010) (shared regional control of management and supervision demonstrates a shared community of interest with excluded stores).

***ii. Geographic Proximity***

Contrary to guidance provided by the Sixth Circuit in *Bry-Fern Care Center, Inc. v. NLRB*, 21 F. 3d 706, 710 (6th Cir. 1994), the RD here largely treated geographic separation as dispositive. The most glaring examples of this are that the RD excluded Salida which is 149 miles from the Denver Stapleton headquarters for all of PPRM, yet included Glenwood Springs and Steamboat Springs which are both farther away than Salida. (Decision, p. 10). The RD also fails to give appropriate weight to the substantial evidence of similar proximity between Southern Colorado (including Salida in the petitioned-for unit) locations and New Mexico locations. (Record: 168-71; Employer Exs. 13-16). See *Bashas', Inc.*, 337 NLRB 710, 711 (2002) (proposed unit does not constitute a coherent geographic unit because excluded stores are in close geographic proximity to other stores in the proposed unit).

Perhaps the most strained aspect of the RD's reasoning in this part is the conclusion that Granby and Steamboat Springs should be included in the bargaining unit because they only have one employee each and would be, in effect, impermissible orphan units of one employee (Decision, pp. 11-12), while simultaneously not applying the same reasoning to Salida, Alamosa, and Cortez,

Colorado and Rio Rancho, New Mexico, all of which only have or had one employee. (Decision, pp. 4-5); *see also Bashas'*, *Inc.*, supra at 711 (finding inappropriate a unit that does not conform to any employer administrative function or organizational grouping); *Alamo Rent-A-Car,* supra at 898 (same). Such an approach is arbitrary and defies common sense and logic.

***iii. Functional Integration***

The RD treated functional integration and employee interchange as one and the same, though the NLRB's own Guide (pp. 74-75) recognizes that they are separate and distinct. Functional integration, when considered appropriately as a single factor, clearly favors the overall unit proposed by PPRM.

Both the COO and Human Resources Director testified without rebuttal to significant functional and service/product integration among the Health Centers in all three states: use of a central warehouse and centralized purchasing; centralized recordkeeping and records management; centralized setting of similar rates of pay; centralized quality control and compliance; the same core services and adherence to Planned Parenthood Federation of America medical standards and guidelines; similar products and services at each clinic; virtually identical equipment; the exact same work performed, skills used, and job classifications at every Health Center; centralized marketing for all of the clinics; overwhelming commonality when it comes to human resources and labor relations functions; and common training often occurring in the centralized location at Denver headquarters – all of which apply regardless of the state in which the APNs, RNs, and HCAs are located. (Record: 33, 159, 161-64, and 194-95). As stated in the case cited by the RD, *Transerv Systems*, 311 NLRB 766 (1993), evidence that employees perform similar functions is relevant when examining whether functional integration exists.

### *iv. Employee Interchange*

The RD focused largely on the degree of employee transfers as part of the employee interchange analysis; however, the RD places undue emphasis on that factor in deciding to exclude the Southern Colorado, Nevada, and New Mexico locations. PPRM's COO testified, and the record is clear, that there is employee interchange between the facilities in Colorado, New Mexico, and Nevada. (Record: 220-29; Employer Exs. 26, 27 and 29). The RD's determination that the degree of interchange and transfer was sporadic should not be dispositive. In fact, the record is no different than what the Board encountered in *Acme* and found sufficient for purposes of concluding an overall unit was appropriate.

By focusing on conditions surrounding the degree of employee interchange, the RD placed undue emphasis on this one factor among many in deciding to exclude the Southern Colorado, Nevada, and New Mexico locations.[3]

### *v. Job Duties and Skills*

The RD determined appropriately this fact overwhelmingly supports PPRM's proposed employer-wide unit. (Decision, pp. 16-17).

### *vi. Terms and Conditions of Employment*

The RD determined appropriately this fact overwhelmingly supports PPRM's proposed employer-wide unit. (Decision, pp. 17-18).

[3] The RD's reasoning also is flawed (p. 16, Footnote 13) regarding the hypothetical difficulty for employee interchange during the winter. Statistically, the mountain pass closures over Vail and Berthoud passes as a means to get to Glenwood Springs and Steamboat, happen far more frequently than Kenosha or Wolf Creek passes on the way to Salida, Alamosa, and Cortez. Further, the potential for delay due to well-known ski traffic between Denver and the petitioned-for unit far outweighs that of the southern clinics.

#### *vii. Extent of Union Organizing*

Though the RD specifically notes that the extent of a petitioner's organizing should not be controlling, that is precisely how it has been treated in this case, especially when considered in light of the above evidence and facts showing the high degree of functional integration and the fact that PPRM's overall unit (not the petitioned-for unit) tracks most closely with its administrative and supervisory organization. Only the proposed overall unit tracks with that structure.

### B. The RD Improperly Shifted The Burden Onto PPRM.

Under the *Specialty Healthcare* standard, the Board allowed unions to define a bargaining unit based on the extent of the union's organizing. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC* v. *NLRB*, 727 F.3d 552 (6th Cir. 2013). In order for an employer to prevail in arguing that additional employees should be included in the bargaining unit, that standard required the employer to show that the excluded employees shared an overwhelming community of interest with the included employees. See *PCC Structurals, Inc.*, supra at 3-5. Although the RD does not mention *Specialty Healthcare* in the Decision, she nevertheless had asked the parties and their counsel in this case to comment on the potential application of the *Specialty Healthcare* standards during the hearing. As the facts below demonstrate, the RD clearly relied on the burden shifting test in finding for the petitioned-for unit.

#### *i. The Regional Director Improperly Weighed Community of Interest Factors In Favor of the Petitioned-For Unit*

In the Conclusion section of the Decision, the RD acknowledged that PPRM overwhelmingly had demonstrated a number of factors in favor of the employer wide unit, including: central control over labor relations, similarity in employee's job duties and skills, and

common terms and conditions of employment. (Decision, p. 18). Yet, the RD opined that these factors were "not dispositive" and found for the petitioned-for unit. (Decision, p. 19). In the Decision, the RD found there were three factors (geographic proximity, some functional integration, and a skewed managerial structure) that she believed slightly weighed in favor for the petitioned-for unit being distinct from others in Colorado, as well as those in New Mexico, and Nevada.

The Decision relies on the RD's determination that the petitioned-for unit (minus one of the petitioned for clinics) has a distinct community of interest from the employees excluded, because the petitioned-for facilities exhibit:

- "***reasonably*** close geographic proximity within the petitioned for unit from Colorado Springs northward…" (Decision, p. 9) (emphasis added).
- "***some*** functional integration within the petitioned for unit as compared to more distant locations…" (Decision, p. 9) (emphasis added).
- "a managerial/supervisory structure that reasonably (***though not perfectly***) tracks with the Petitioner's preferred unit…" (Decision, p. 9) (emphasis added).

However, no witness testified that the facilities north of Colorado Springs are a distinct employer-designated geographical grouping, and the RD's use of Colorado Springs as an imaginary line is without support. Similarly, while the RD's selected unit may share "some function integration" and shared supervisors, the selected unit shares those same factors with the excluded employees. The RD's reliance on these factors is misplaced as the record shows the selected unit is neither geographically coherent nor related to any definable employer function. See *Sleepy's Inc.*, supra at 138 (proposed unit with only selected stores in the state is not geographically coherent because other stores are in proximity); *Bashas', Inc.*, supra at 711 (finding

inappropriate a unit that does not conform to any employer administrative function or organizational grouping).

In attempting to qualify why these nebulous factors outweighed those in favor of PPRM's employer-wide unit, the RD went on to make several contradictory determinations that further confuse the reasoning behind the selected unit, including:

- "The fact that employees in all locations have similar duties and skills and common terms and conditions of employment means that the employees in the subset of the petitioned-for locations also share the same community of interest…" (Decision, p. 19).

- "[w]ith the exception of similarity of terms and conditions of employment and job duties and skills, the record is devoid of any factors that would establish a community of interests between petitioned for employees and the employees in Nevada." (Decision, p. 19).

First, the fact that employees who work at the excluded clinics perform the same work, use the same skills, and enjoy the same terms and conditions of employment as those petitioned-for, is not supportive of the Decision. Such a fact weighs in favor of finding the petitioned-for unit not appropriate. *Alamo Rent-A-Car, supra* 897-889 (unit that consists of only half of employer locations is not appropriate in part because employees at the excluded facilities perform the same work under same conditions as employees at included facilities).

Further, the unsupported finding that the petitioned-for unit did not have a community of interest with employees in Nevada is only half of the required analysis. Ignoring the relevant facts related to common supervision, employee interchange, integration, identical job duties and conditions related to employees in Nevada and the petitioned-for unit, the RD's analysis does nothing to address or distinguish the community of interests between employees in southern Colorado or New Mexico and the petitioned-for unit. (Decision, p. 19).

The threshold issue here is whether the petitioned-for unit's community of interest was sufficiently distinct from the excluded facilities. By improperly weighing certain factors, the RD failed to properly compare the community of interests for the petitioned-for employees with those excluded.

### *ii. The RD Ignored Employee Choice And Failed To Allow Excluded Employees The Ability To Exercise Their Section 7 Rights*

The RD's silent reliance on the *Specialty Healthcare* rule is clear in the complete disregard of employee choice in failing to allow New Mexico and Nevada employees the ability to exercise their Section 7 rights in the election. In addressing "Employee Choice" in the Decision, the RD provides no analysis. The section devoted to this analysis simply states, "[b]ased on other factors in this matter, including geographic proximity of the facilities, functional integration, interchange, and the fact the petitioned for unit largely tracks the Employer's administrative and supervisory organization, the Petitioner's extent of organization is not a controlling factor in this unit determination." (Decision, p. 18).

Indeed, by overturning *Specialty Healthcare*, the Board sought to avoid the scenario here, namely, that no meaningful analysis of the interests of employees excluded from the unit would occur and that the imbalanced *Specialty Healthcare* standard would force an employer to face moving forward with the Union's, and in this case the RD's, preferred, smaller petitioned-for unit:

> Specialty Healthcare gives all-but-conclusive deference to every petitioned-for "subdivision" unit, without attaching any weight to the interests of excluded employees in potential "employer," "craft," "plant," or alternative "subdivision" units, unless the employer proves the existence of overwhelming" interests shared between petitioned-for employees and those outside the petitioned-for "subdivision." The discrepancy between what Section 9(b) requires, on the one hand, and what Specialty Healthcare precludes, on the other, is reinforced by Section 9(c)(5), added to the Act in 1947, where Congress expressly states that "kin determining whether a unit is appropriate . . . the extent to which

> the employees have organized shall not be controlling." We believe Specialty Healthcare effectively makes the extent of union organizing "controlling," or at the very least gives far greater weight to that factor than statutory policy warrants ...

*PCC Structurals*, 365 NLRB No. 160, slip op. at 6-7.

By failing to analyze the petitioned-for unit in conjunction with Board law and guidance, and by utilizing a now rejected burden-shifting analysis, the RD committed legal error. The conclusions she reached based upon this misguided analysis are entitled to no consideration.

#### *iii. The Board Should Apply The Traditional Burden Of Proof Under PCC Structurals To Petitioned-For Multi-Facility Units*

In *PCC Structurals*, the Board evaluated how to determine whether a petitioned-for unit is appropriate for purposes of collective bargaining. The Board began by noting the first inquiry is "whether the employees in a petitioned-for group share a community of interest sufficiently distinct from the interests of employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit." *PCC Structurals, Inc.*, 365 NLRB No. 160 at slip op. at 5. After determining that employees within a particular grouping have shared interests with each other, the Board then examines whether "excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (emphasis in original) (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)).

Put another way, and in the context of this case, the question should be whether the interests of the petitioned-for PPRM employees are sufficiently distinct from the excluded employees to warrant their exclusion and the establishment of a separate unit. *PCC Structurals, Inc.*, slip op. at

5; citing *Wheeling Gaming*, 355 NLRB 637 (2010). The record here clearly answers that question in the negative.

**3. *Acme* Is Controlling And Should Not Be Overruled.**

**A. The RD Erred In Holding That *Acme* Is Not Applicable.**

As discussed at length in the Request for Review, and repeated here, the RD cited, but departed from officially reported Board precedent, *Acme Markets, Inc.*, 328 NLRB 1208 (1999). (Decision, p. 9). This was a critical error. Had the RD properly applied *Acme*, the excluded facilities at issue here would have been found to have a community of interest with the petitioned-for unit.

In reaching their conclusion in *Acme*, the Board concluded that a "four-state, employer wide [sic] unit is an appropriate unit" on facts not nearly as strong as those in the present case. In *Acme*, one Director of Pharmacy oversaw the entire four-state pharmacy operation. Here, PPRM's three-state operation is overseen by a senior leadership team based in Denver (Record: 25-32). 328 NLRB at 1208. In *Acme*, the Board rejected the same arguments raised here by the Petitioner and relied upon by the RD, namely, that there is a "lack of substantial interchange or contact between pharmacists in those three states and their counterparts in New Jersey." Finally, in *Acme*, the Board concluded that the record there failed to show that the community of interest for pharmacists in the three petitioned-for states was distinct form the community of interest they shared with those in the New Jersey stores. The Board found there, just as it should find here, that an employer-wide or overall unit makes legal and common sense.

### B. Application Of The Board's Reasoning In *Acme* Dictates That PPRM's Facilities Should Be An Employer Wide Unit.

In *Acme*, five area pharmacy managers (APMs) reported to the Director – one APM had responsibility for three states, two APMs split the pharmacies in Pennsylvania, and two APMs split pharmacies in New Jersey. *Id*. Here, PPRM employed three Regional Directors, one of whom has responsibility for Nevada, New Mexico, and Southern Colorado, while the other two Regional Directors (one of whom was on leave at the time of the hearing) and Senior Directors split Health and Surgical Centers in Colorado and New Mexico.[4] (Record: 27; Employer Ex. 10). The PPRM Regional Directors and Senior Directors report to the Vice President of Clinical Operations who, in turn, reports to the Executive Vice President and Chief Operating Officer, both of whom work in Denver. (Record: 28-30; Employer Ex. 28). The fact that there were local pharmacy managers, just like the local Health Center managers utilized by PPRM, did not change the Board's conclusion that an employer–wide unit was appropriate. In addition, the administrative structure here extends to all three states, just like the administrative structure in *Acme* extended to all four states. *Id.* at 1209.

In *Acme*, pharmacy operations were standardized, personnel and labor relations policies were developed and administered centrally, and evaluation and disciplinary procedures were common to all facilities. *Id.* Here, all the Health Center operations are standardized as they provide the same core services such as health exams, pregnancy testing, and STD and HIV testing, regardless of the state in which they are located (Record: 160); timekeeping, payroll, accounting, records management and compliance are all run out of Denver regardless of location (Record: 157-

[4] Since the hearing, PPRM has restructured this position and now has two regional directors that have health centers in two and three states.

59; 178); and the operations of each clinic are fully integrated into the Planned Parenthood Federation of America medical standards and guidelines, which are enforced by the Clinical Quality and Management Team out of Denver for all locations (Record: 25, 32, 74, 159-60, and 218). Personnel and labor relations policies, such as the PPRM Employee Handbook and Supervisors Human Resources Policies and Procedures Manual, are all implemented and enforced centrally by Human Resources out of Denver for all locations (Record: 54-55,192-93, and 208-09). Also, evaluation and disciplinary policies and procedures are common to all facilities and are run almost entirely out of Denver by Human Resources and the three PPRM Regional Directors (Record: 191, 214; Employer Exs. 20-23).

In *Acme*, pay for pharmacy managers and staff pharmacists was largely the same. *Id.* Here, APNs, RNs, and HCAs all received the same pay *and* benefits such as health insurance, 401 (k), leave entitlements, and workers' compensation. (Record: 74, 159, 178-79, 201, 208, and 229-31). As in *Acme*, skills and job duties are the same regardless of whether APNs, RNs, or HCA's are located in Colorado, Nevada, or New Mexico. (Employer Exs. 5, 6, and 7).

In *Acme*, the Board found it significant that while each state had different licensing requirements for pharmacists, some Acme pharmacists were licensed in more than one state – at least four were licensed in Pennsylvania and New Jersey and provided fill-in coverage at pharmacies in both states *on a sporadic basis. Id.* (emphasis added). Here, PPRM has a specific program for Float and Traveler employees (Employer Exs. 25, 26, and 27), where all must be able to travel to and be licensed in all three states (Record: 35, 39, 56, and 164-67). Additionally, the On-Call staff must be licensed in and be able to take calls from patients located in all three states. (Record: 39).

In *Acme*, training seminars and participation in special trade events were open to pharmacists regardless of the state in which they worked. *Id.* Here, orientation and training are run entirely out of Denver, and employees from all three states travel to Denver for such training. Human Resources, the training department, and the Senior Leadership Team all travel to Health Centers in all three states for training and education. (Record: 33, 159, 161-63, 194-95).

In *Acme*, the Board rejected the same arguments raised here by the Petitioner and relied upon by the RD, namely, that there is a "lack of substantial interchange or contact between pharmacists in those three states and their counterparts in New Jersey." Finally, in *Acme*, the Board concluded that the record there failed to show that the community of interest for pharmacists in the three petitioned-for states was distinct from the community of interest they shared with those in the New Jersey stores. The Board found there, just as it should find here, that an employer-wide or overall unit that makes legal and common sense.

Based upon the shared community of interest between all employees and facilities across the board, the principles of freedom of choice, collective expression, and efficient and stable collective bargaining (all principles cited in the Decision, p. 5) will best be served by the employer-wide or overall unit sought by PPRM.

## III. CONCLUSION

PPRM respectfully requests that the Board review and overturn the RD's Decision, along with such further relief that the Board deems appropriate.

Submitted this 30th day of April, 2018.

Sincerely,

*/s/ Todd Fredrickson*

Todd Fredrickson
For FISHER & PHILLIPS LLP
1801 California Street, Suite 2700
Denver, CO 80202
Tel: (303) 218-3650
Fax: (303) 218-3651

Attorneys for the Employer

## CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing to be filed via the Agency's E-Filing system to Paula S. Sawyer, Regional Director and served via email to counsel for the Petitioner in this action this 30th day of April, 2018.

Paula S. Sawyer
Regional Director
National Labor Relations Board, Region 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294
Telephone: (303) 844-3551
Facsimile: (303) 844-6249

Richard Rosenblatt, Esq.
Rosenblatt & Gosch, PLLC
8085 East Prentice Ave.
Greenwood Village, CO 80111
Telephone: (303) 721-7339
Facsimile: (720) 528-1220
rrosenblatt@cwa-union.org

*/s/ Casey M. Kite*